

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO.8 OF 1998

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1. Whether reporters of local papers may be allowed to see the order ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the order ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?
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BHARATSING MAHIJIBHAI RAJPUT

versus

UDESING BHIMSING SODA PARMAR & ANR.

Appearance:

MR DN PATEL for the Appellant

MR BN RAVAL for the Respondents

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order: 13/07/1998

C.A.V. ORDER

This is a Second Appeal under Section 100 of the Civil Procedure Code, 1908, filed by the original defendant, arising out of the Regular Civil Suit No.590 of 1983 filed by the plaintiffs-respondents herein, and decided by the 3rd Joint Civil Judge, (S.D.) at Nadiad on 17th September 1994. The suit of the plaintiffs for declaration that they are in possession of half of the land of block No.135 from the date of filing of the suit till the date of decision has been decreed and a decree for permanent injunction has also been granted in favour of the plaintiffs-respondents under which the defendant-appellant has been restrained from disturbing the possession of the plaintiffs either by himself or through his persons for ever. This decree passed by the trial Court in favour of the plaintiffs-respondents has

been affirmed by the Appellate Court, Assistant Judge, Kheda at Nadiad, in Regular Civil Appeal No.68 of 1994, filed by the defendant-appellant. Hence this Second Appeal before this Court.

2. The facts of this case are that the plaintiffs, the respondents herein, have filed a Civil Suit against the defendant, the appellant herein, on the ground that they are the owners of half of the land of block No.135 admeasuring about 22 Gunthas, situated in village Kadi, Taluka Nadiad. Eleven Gunthas of land from the block aforesaid on the western side belongs to the plaintiffs-respondents, while the rest of the half part stands in possession of the defendant-appellant. The plaintiffs-respondents claimed themselves to be in actual and physical possession of the half of the block No.135, i.e. the western portion since last many years. The defendant-appellant wanted to dispossess the plaintiffs-respondents from half of the portion of block No.135 and he started to claim himself to be absolute owner of the said block. The defendant-appellant is serving in the Revenue Department as Talati-cum-Mantri and he has managed to transfer the suit land in his own name by influencing his position in the Department. The defendant has made all the efforts of getting his name entered in the Revenue records as a sole owner of block No.135. However, the plaintiffs have challenged those entries and in the Revenue Court, the proceedings are pending. The relationship of the plaintiffs and respondent has also been stated and they are the first cousins. It was further case of the plaintiffs-respondents in the Civil Suit that the block No.135 originally was Survey No.126/2 and was belonging to Mr.Bhansali Parshottam Girdhar and Vithaldas Dalsukhdas Bhansali. The block No.135 was purchased by the fathers of both the parties by a registered Sale Deed dated 6.10.47 against the common land standing in the name of purchasers, which land appears to be originally bearing Survey No.228/1. So in lieu of purchase of block No.135, the fathers of the parties have given their old land Survey No.228/1 and Rs.600/= to the vendors. This land was stated to be purchased for the purpose of construction of houses and agricultural operations. The plaintiffs-respondents' parents died in their early age and the father of the defendant was administering the estate as well as the plaintiffs-respondents. As soon as the plaintiffs-respondents have attained their majority, Survey No.135 was distributed amongst the parties. The eastern 11 Gunthas of this land was acquired by the father of the defendant-appellant and the western land of 11 Gunthas was handed over to the plaintiffs-respondents.

This distribution has taken place during the life time of the father of the defendant. The plaintiffs further urged that they are using the suit land for keeping grass and they are residing therein since last 13 years. The defendant has no right, title or interest whatsoever in the suit land, i.e. half portion of Survey No.135. The cause of action was stated to have arisen by the act of defendant of making change in the revenue entry.

3. On receipt of the Summons of the suit, the defendant-appellant put appearance and contested the suit by filing written statement vide Ex.18, inter alia, contending that the suit is false and not tenable against him. It is denied that the plaintiffs-respondents are the owners of the eleven Gunthas of block No.135. The defendant pleaded that he is the exclusive owner of the entire block No.135. The defendant has further come up with the case that entire block No.135 was purchased by his father in exchange of land bearing Survey No.228/1. The land of Survey No.228/1 was in Gharkhed of his father and as the father of the plaintiffs was the real brother of his father, his name was shown in the said document, i.e. the Sale Deed of Survey No.135 in good faith. Otherwise, in fact, the land of block No.135 was exclusively purchased by defendant's father and hence the plaintiffs have no right, title or interest whatsoever in the half of the land.

4. On the basis of the pleadings of the parties, the learned trial Court has framed as many as five issues in the case which read as under:

- (1) Whether the plaintiffs prove that they are in possession of the suit land on the date of the filing of the suit as owner?
- (2) Whether the defendant proves that he is in possession of the suit land as owner as stated in written statement?
- (3) Whether the plaintiffs prove that the defendant is disturbing their possession of the suit land?
- (4) Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for in para-11 of the plaint?
- (5) What order and decree?

5. After considering the documentary as well as oral evidence produced by both the parties, the learned trial

Court, vide its judgment and decree dated 17th September 1994, decreed the plaintiffs' suit. The finding on issue No.1 was recorded in affirmative, i.e. in favour of the plaintiffs. The finding on issue No.2 was recorded in the negative, i.e. against the defendant. The finding on issue No.3 was recorded in the affirmative, i.e. in favour of plaintiffs.

6. The Appellate Court has affirmed the judgment of the trial Court.

7. The learned counsel for the appellant contended that both the Courts below have ignored the entries referred in Village Form No.7/12 for village Kadi, Taluka Nadiad, District Kheda in respect of Survey No.228/1. The next contention has been made that the judgments of the Courts below which have been given in ignorance of the aforesaid revenue record are perverse. It has further been contended that both the Courts below have ignored the Panchnama prepared by the Court Commissioner which reveals progressive construction of a building in block No.135 and as the judgment has been passed in ignorance of the material evidence, the same is vitiated.

8. On the other hand, the learned counsel for the respondents-plaintiffs supported the judgments of the Courts below.

9. I have given my thoughtful considerations to the submissions made by learned counsel for the appellant-defendant.

10. The learned counsel for the appellant-defendant does not dispute that the defendant is working in the Revenue Department as Talati-cum-Mantri. It is also not in dispute that when the defendant-appellant has tried to get the land of block No.135 entered in the revenue records as the land of his exclusive ownership, the respondents-plaintiffs have initiated necessary proceedings before the Revenue Court against that action of the appellant.

11. Both, the trial Court and the first Appellate Court have decided concurrently in favour of the respondents-plaintiffs that they are in possession of the suit land. From the judgment of the trial Court, I find that this issue of possession of land with the plaintiffs, has been decided after taking into consideration the documentary and oral evidence produced by both the parties. The Commissioner's report, i.e. the Panchnama has also been considered by the Courts

below and it is incorrect to contend on the part of the learned counsel for the appellant that the said document has been ignored. Much emphasis has been laid by the learned counsel for the appellant on the question of ignorance of entries referred to in Village Form No.7/12 of Village Kadi, Taluka Nadiad, District Kheda in respect of Survey No.228/1. By this entry, the learned counsel for the appellant tried to persuade the Court to accept that the father of the appellant was exclusive owner of this land. Even if it is taken that the aforesaid entry is in favour of the father of the appellant-defendant, still, this Court cannot be oblivious of the fact that the Sale Deed which has been executed by the vendors of block No.135 was in the name of the father of the defendant as well as the plaintiffs. The defence with which the appellant-defendant has come up to explain his possession over entire block No.135 is difficult to accept and both the Courts below have not committed any error in deciding the suits in favour of the plaintiffs. Even if it is taken to be a case that the father of the respondents-plaintiffs has foregone his right in block No.135, as it is a case of relinquishment of right in immovable property, and which can only be done by a registered document, and as no documentary evidence has been produced to that effect, this case also cannot be accepted, in the absence of any document. In view of the fact that the Sale Deed of block No.135 is in the name of both the fathers, of defendant and the plaintiffs, no interference of this Court is called for in the judgments of the Courts below. In the present case, I do not find any question of law, much less a substantial question of law that arises, which calls for interference of this Court. In the result, this Second Appeal fails and the same is dismissed.

(S.K.Keshote, J.)

(sunil)